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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/725,546	12/03/2003	Grant McArthur	9351-215	4009
1059	7590	01/10/2006	EXAMINER	
BERESKIN AND PARR 40 KING STREET WEST BOX 401 TORONTO, ON M5H 3Y2 CANADA			KALAFUT, STEPHEN J	
		ART UNIT	PAPER NUMBER	
		1745		
DATE MAILED: 01/10/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/725,546	MCARTHUR ET AL.	
	Examiner Stephen J. Kalafut	Art Unit 1745	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on \_\_\_\_.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-64 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_ is/are allowed.  
 6) Claim(s) 1-64 is/are rejected.  
 7) Claim(s) \_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 03 December 2003 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date 03 December 2003.

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_.  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_.

The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. Two claims are numbered 51. Misnumbered claims 51 (second occurrence) through 63 have been renumbered 52-64, respectively.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 50-54 (where 54 was originally numbered 53) are rejected under 35 U.S.C. 103(a) as being unpatentable over Hsu *et al.* (US 5,858,568) in view of Aull (US 6,898,710).

Hsu *et al.* disclose a system including a plurality of “off board” docking stations for electric vehicles (column 2, lines 56-59), each of the vehicles comprising a fuel cell (column 2, lines 22-30), which are connected by a communications network that can transmit information about condition parameters of the vehicle and the station, such as the identity of the vehicle (column 4, lines 36-46). Hsu *et al.* does not explicitly mention the identity of the station, or the use of the Internet, IP addresses, or digital identification means such as a PKI certificate. Aull discloses a public key infrastructure (PKI) system, and teaches that PKI certificates may be used for identification purposes (column 1, lines 44-46). Since a PKI uses a “server platform”, which may include a computer or workstation (column 2, lines 2-6), the system would be digital. Thus, the PKI certificate would be a type of digital identifier. A PKI system also enables business to be conducted electronically online (column 1, lines 25-27), which would imply use of the

Internet and specific addresses thereon. Because of the ability of a PKI certificate to verify both the authority of the issuer thereof and the identity of the user (column 1, lines 55-61), it would be obvious to use a PKI certificate as disclosed by Aull to convey the identity of a vehicle disclosed by Hsu *et al.* Since identity is a parameter, as defined by Hsu *et al.*, and the station's parameters are also monitored, it would also be obvious to use a PKI certificate to identify each "off board" docking station disclosed by Hsu *et al.*

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-53 (claim 53 originally being numbered 52) and 55-64 (originally numbered 54-62, respectively) are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-54 of U.S. Patent No. 6,673,479. Although the conflicting claims are not identical, they are not patentably distinct from each other because the system of

claims 1-53 and 55-59 would perform the method steps recited by the patented claims, such as connecting a fuel cell powered vehicle to an electricity consumer, determining (*i.e.*, calculating) the costs and prices for fuel and electricity, and enabling real-time buying and selling of electricity produced on the vehicle. The use of plural vehicles, brokers, aggregators, contract negotiations, vehicle identifiers and the Internet, among other present features, are also recited in the patented claims. The steps of present method claims 60-64 (originally numbered 59-63) would cover the use of a contract to sell electricity from a vehicle, while docked at a station, as recited in parented claims 45-48.

Claim 54 (originally numbered 53) rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 12 of U.S. Patent No. 6,673,479 in view of Aull (US 6,898,710). Present claim 54 differs from patented claim 12 by reciting a PKI certificate as the digital identifier. Aull discloses PKI certificates as identifiers, and teaches that they would be digital (column 1, lines 44-46 and column 2, lines 2-6). Because of the ability of a PKI certificate to verify both the authority of the issuer thereof and the identity of the user (column 1, lines 55-61), it would be obvious to use a PKI certificate as disclosed by Aull to convey the identity of a vehicle used in the method recited in patented claim 12.

Claims 55-59 (originally 54-58) are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase “vehicle adapted to negotiate a contract” is

confusing because it implies that the vehicle, rather than a person, negotiates the contract, something that only a person is able to do.

The disclosure is objected to because of the following informalities: On page 3, line 15 “an internal combustion engines” needs to be rendered singular (“engine”) to agree with the verb “produces”. On page 18, lines 11 and 12, “vehicle” needs to be rendered plural, to agree with “a plurality of”. On page 41, line 11, “building” should be rendered plural, to agree with the verb “have”. Appropriate correction is required.

The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Kalafut whose telephone number is 571-272-1286. The examiner can normally be reached on Mon-Fri 8:00 am-4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick J. Ryan can be reached on 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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